

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION)	
OF T&M ASSOCIATES FOR A)	
CERTIFICATE TO PROVIDE ELECTRIC)	PSC DOCKET NO. 13-437
SUPPLY SERVICES WITHIN THE STATE)	
OF DELAWARE)	
(FILED NOVEMBER 4, 2013))	

ORDER NO. 8521

AND NOW, this 29th day of April, 2014, the Delaware Public Service Commission (the “Commission”) determines and Orders the following:

WHEREAS, pursuant to 26 *Del. C.* §1012(a), prior to doing business in the State of Delaware, every Electric Supplier¹ seeking to provide Electric Supply Service² to customers shall obtain a certificate from the Commission. In addition, Section 1012(a) provides that the Commission shall promulgate rules and regulations governing the information that Electric Suppliers shall be required to provide and requirements to be satisfied in order to obtain such certificate; and

WHEREAS, the Commission has promulgated such rules and regulations governing the information that Electric Suppliers are required to provide and the requirements that must be satisfied to obtain such a certificate. Such rules and regulations are set forth in 26 *Del. Admin. C.* §3001 (the “Supplier Rules”); and

¹ Under 26 *Del. C.* §1001(14)(c), an "electric supplier" means a person or entity certified by the Commission that sells electricity to retail electric customers utilizing the transmission and/or distribution facilities of a nonaffiliated electric utility, including: Any broker, marketer or other entity (including public utilities and their affiliates).

² Under 26 *Del. Admin. C.* §3001-1.0, “Electric Supply Service” means the provision of electricity or electric generation service.

WHEREAS, pursuant to Section 3001-2.1 of the Supplier Rules, all Electric Suppliers must obtain an Electric Supplier Certificate³ from the Commission to sell Electric Supply Service to, or arrange the purchase on behalf of, Retail Electric Customers⁴ prior to offering contracts to Customers or commencing service; and

WHEREAS, Section 2.1.1 of the Supplier Rules requires that all Electric Suppliers file with the Commission an original and ten copies of an Application⁵ for an Electric Supplier Certificate. Such application must contain “all the information and exhibits hereinafter required and may contain such additional information as the Applicant⁶ deems appropriate to demonstrate to the Commission that it possesses the technical, financial, managerial and operational ability to adequately serve the public;” and

WHEREAS, Section 2.1.1.5 of the Supplier Rules requires that each Applicant “present *substantial evidence* supporting their financial, operational, managerial and technical ability to render service within the State of Delaware.” (emphasis added). This Section further provides, in part, that “[s]uch evidence shall include, but is not limited to” information such as a list of states in which the Applicant or any of its affiliated interests is presently selling electric supply service to Retail Electric Customers (Section 3001-2.1.1.5.3 of the Supplier Rules), a list of state in which the Applicant or any of its affiliated interests has been denied approval of a State Commission to sell electricity to Retail Electric Customers or has had its authority revoked (Section 3001-2.1.1.5.4), a list of states in which Applicant or any of its affiliated interests is

³ Under Section 3001-1.0 of the Supplier Rules, an “Electric Supplier Certificate” or “ESC” means a certificate granted by the Commission to Electric Suppliers that have fulfilled the Commission’s certification requirements.

⁴ Under 26 *Del. C.* §1001(21), a “retail electric customer” or “customer” means a purchaser of electricity for ultimate consumption and not for resale in this State, including the owner/operator of any building or facility, but not the occupants thereof, that purchases and supplies electricity to the occupants of such building or facility.

⁵ Although this term is capitalized in this section of the Supplier Rules, it not defined in either the Delaware Code or the Supplier Rules.

⁶ Under Section 3001-1.0 of the Supplier Rules, an “Applicant” means an entity or person seeking to obtain an Electric Supplier Certificate.

presently selling electric supply service to Retail Electric customers and a list of states in which Applicant or any of its affiliated interests has pending applications to sell electric supply service to Retail Electric customers (Section 3001-2.1.1.5.3); relevant operational experience of each principal officer responsible for Delaware operations (Section 3001-2.1.1.5.5), and a statement detailing any criminal activities of which the Applicant or any of its affiliated interests has been charged or convicted, or which the principal or corporate officers of the Applicant or any of its affiliated interests has been charged or convicted (Section 3001-2.1.1.8.6); and

WHEREAS, Section 3001-2.1.1.5.9.11 also provides the following: “The Commission or its Staff may consider any other information submitted by the Applicant if it can show the financial, operational, managerial, and technical abilities of an Applicant;” and

WHEREAS, pursuant to the Electric Utility Restructuring Act (the “Act”) (26 *Del. C.* §1001 to §1020) and the Supplier Rules, on November 4, 2013, T&M Associates d/b/a T&M Associates Consulting Engineer, Inc. (the “Company”)⁷ filed an application (“Application”) requesting certification as a Retail Electric Supplier in order to broker the sale or purchase of Electric Supply Service; and

WHEREAS, in the Application, the Company stated that it seeks certification as a Broker⁸ that will utilize appropriate energy procurement strategies to meet the needs of residential, commercial, and industrial customers in Delaware; and

WHEREAS, during Staff’s review of the Application, Staff advised the Company of the requirement for a toll-free number of a customer service department as set forth in Section 3001-

⁷ Based on further investigation, it was discovered that T&M Associates is the full corporate name of the Applicant and that it filed for registration with the State of Delaware, Division of Corporations as a foreign corporation using the fictitious name” T&M Associates Consulting Engineer, Inc.”

⁸ Pursuant to Section 1001(3) of the Act, a "broker" means a person or entity that acts as an agent or intermediary in the sale or purchase of, but that does not take title to, electricity for sale to retail electric customers. Brokers are included in the definition of an Electric Supplier under Section 1001(14)(c) of the Act.

2.1.1.8.4 of the Supplier Rules. The Company has requested a waiver of this requirement pursuant to Section 3001-2.5 of the Supplier Rules. Because the Company will not have contracts for Electric Supply Service with Retail Electric Customers, Staff has recommended that the Commission grant the waiver requested by the Company; and

WHEREAS, in the Application, the Company also stated that it was incorporated in the State of New Jersey on March 21, 2013 (Section 3001-2.1.1.8.2) and provided a copy of a business licensed from the State of Delaware, Division of Revenue with issuance date of December 13, 2010; and

WHEREAS, in the Application, the Company disclosed and provided documentation showing that on June 8, 2004, Mr. Mark Neisser ("Mr. Neisser"), a current Senior Vice President of the Company and a member of the Company's Board of Directors, pled guilty in New Jersey to one count of third degree Filing or Preparing False or Fraudulent Tax Returns for JCA Associates, Inc. The Company asserted that at no time did JCA Associates, Inc. have any ownership interest in the Company or its affiliates; and

WHEREAS, the Company also disclosed and provided documentation showing that on June 15, 2006, Mr. Neisser entered into a Consent Order with the New Jersey Department of Treasury, Division of Property Management and Construction. This Consent Order disbarred Mr. Neisser from state work for a period of five years; and

WHEREAS, the Company also stated in the Application as follows: "On April 16, 2007, Mr. Neisser became an employee of T&M Associates. On September 18, 2009, Mr. Neisser was elected to the Board of Directors and became a Senior Vice President of T&M Associates." In correspondence between counsel to the Company, counsel to Staff, counsel to the Commission, and counsel to the Division of the Public Advocate ("DPA"), it was disclosed that Mr. Neisser is

no longer a member of the Company's Board of Directors, although the two prior statements made on the Application imply that Mr. Neisser is still a member of the Company's Board of Directors; and

WHEREAS, after further investigation, it was discovered that the Company's authorization to do business in the State of Delaware was issued on May 17, 2013, but the issuance date of the business license showed that the Company may have been conducting business in the State of Delaware earlier than its authorization date per the State of Delaware, Division of Corporations; and

WHEREAS, after further investigation, the Company disclosed that it had been doing business in the State of Delaware since 1992, but had not been authorized to conduct such business because it had not filed as a foreign corporation with the Delaware Division of Corporations until 2013; and

WHEREAS, in response to questions from Staff and counsel to the Commission, on March 7, 2014, and April 10, 2014, and April 24, 2014, the Company filed supplemental information. In the supplemental information, the Company confirmed that it had hired an outside company in 2013 to perform a review of all of its licenses and discovered that the Company had failed to obtain authorization to do business in the State of Delaware through registration with the Delaware Division of Corporations; and

WHEREAS, in the supplemental information filed, the Company also provided documentation showing that it was incorporated in New Jersey on March 21, 1966.⁹ At a later date, counsel to the Company stated that this was an error; and

⁹ This is in contrast to the statement made by the Company in its application that it had been "incorporated in New Jersey, 3/21/2013."

WHEREAS, in the supplemental information filed, the Company asserted (and provided supporting documentation to show) that it obtained a business license from the State of Delaware, Division of Revenue starting in 1992 and still holds this business license to date; however, the Company only recently registered to do business as a foreign corporation in the State of Delaware on May 17, 2013;

WHEREAS, Delaware law prohibits any foreign corporation from doing business of any kind in this State without having first filed and obtain authorization with the State of Delaware, Division of Corporations. See 8 *Del. C.* § 371(b).¹⁰ In addition, Delaware law provides for penalties for non-compliance with 8 *Del. C.* §371(b) and for fines and/or overdue franchise taxes¹¹ under 8 *Del. C.* §378; and

WHEREAS, in response to questions from counsel to the Commission, the Company filed its 2010, 2011, and 2012 annual reports with the Delaware Division of Corporations and paid past-due filing fees, late fees, and penalties in the amount of \$1,150.00; and

WHEREAS, Staff has reported to the Commission that the Application fulfills all of the requirements for an Electric Supplier Certificate to act as a Broker as set forth in the Supplier Rules and therefore has recommended that the Commission issue an Electric Supplier Certificate authorizing the Company to broker sales and customer purchases of Electric Supply Services in the State of Delaware; and

¹⁰ 8 *Del. C.* 371(b) provides, in pertinent part, that no foreign corporation shall do any business in this State, through or by branch offices, agents or representatives located in this State, until it shall have paid to the Secretary of State of this State for the use of this State, \$80, and shall have filed in the office of the Secretary of State: (1) A certificate ... issued by an authorized officer of the jurisdiction of its incorporation evidencing its corporate existence.... The statement shall be acknowledged in accordance with 8 *Del. C.* §103.

¹¹ 8 *Del. C.* §378 provides, in pertinent part, that any foreign corporation doing business of any kind in this State without first having complied with any section of this subchapter applicable to it, shall be fined not less than \$200 nor more than \$500 for each such offense. Any agent of any foreign corporation that shall do any business in this State for any foreign corporation before the foreign corporation has complied with any section of this subchapter applicable to it, shall be fined not less than \$100 nor more than \$500 for each such offense.

WHEREAS, the Commission finds that it has the authority, based on the facts set forth above, to propose to deny the Company certification as an Electric Supplier in the State of Delaware;

WHEREAS, pursuant to the Act, the Supplier Rules, and 29 *Del. C.* §10131(b), the Commission proposes to deny granting the Company certification as an Electric Supplier in the State of Delaware based the following: Conducting business in the State of Delaware in violation of Delaware law, specifically, without complying with 8 *Del. C.* § 371(b);

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. By issuing the Notice attached as **Exhibit “A”**, the Commission hereby proposes to deny granting the Application, as amended and supplemented, which the Company filed with the Commission.

2. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary

EXHIBIT "A"

April 29, 2014

VIA CERTIFIED MAIL AND REGULAR MAIL

T&M Associates d/b/a T&M Associates Consulting Engineer, Inc.
Eleven Tindall Road
Middletown, NJ 07748
Attn: Mr. Michael Mandzik, Director, Energy Procurement Advisory Services

WITH COPIES TO:

Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808

WITH COPIES TO:

Dominic J. Balascio, Esq.
Parkway Law LLC
3171 duPont Parkway, Suite B
P.O. Box 1016
Middletown, DE 19709

RE: IN THE MATTER OF THE APPLICATION OF T&M ASSOCIATES FOR A
CERTIFICATE TO PROVIDE ELECTRIC SUPPLY SERVICES WITHIN THE
STATE OF DELAWARE (FILED NOVEMBER 4, 2013) - PSC DOCKET NO.
13-437

Dear Mr. Mandzik:

On November 4, 2013, T&M Associates d/b/a T&M Associates Engineer, Inc. ("T&M") filed an application ("Application") with the Commission and requested certification, under 26 Del. C. §1012 and 26 Del. Amin. C. §3001, for it to act as an Electric Supplier (broker) in the State of Delaware. Staff and counsel to the Commission investigated the Application and have discovered that T&M has been doing business in State of Delaware prior to obtaining authorization to conduct such activities, which is a violation of Delaware law.

The Commission proposes to deny the Application based on the T&M's failure to obtain the necessary prior approval to operate as an authorized business entity in the State of Delaware.

Please see the attached Order No. 8521 which sets forth in further detail the Commission's reasons for this proposed denial of T&M's request to obtain certification as an Electric Supplier in the State of Delaware.

You have ten days to request a hearing before the Commission if you wish to argue that there is no basis to deny your Application. Submit any request for a hearing in writing by U.S. mail to the attention of the Commission Secretary. In the absence of a hearing, the Commission's proposed decision to deny your Application will become final. If you request a hearing, please be advised that you will have the following rights at that hearing:

- 1) You have the right to present evidence, to be represented by counsel and to appear personally or by other representative.
- 2) You or your counsel shall have the right to examine and cross-examine the witnesses.
- 3) You may subpoena witnesses. Requests for subpoenas should be directed to: Alisa Bentley, Secretary, Public Service Commission, 861 Silver Lake Blvd., Dover, Delaware.
- 4) All testimony before the Commission shall be under oath, and a stenographic record of the hearing shall be made.
- 5) The Commission must reach its decision in this matter based upon the evidence received at the hearing.

If you do not withdraw your Application or request a hearing, the denial of your Application will be finalized by the Commission at its next meeting. If you have any questions concerning this matter, please contact the Commission office at (302) 736-7500.

Sincerely,

Alisa Bentley, Secretary
DELAWARE PUBLIC SERVICE COMMISSION